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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: WEBSTER et al.

Confirmation No.: 5537

Application No.: 09/723,326

Group Art Unit: 1632

Filed: November 28, 2000

Examiner: McKelvey, T.

For: MOLECULAR SWITCH FOR  
REGULATING MAMMALIAN GENE  
EXPRESSION

Attorney Docket No.: 10989-0042999

RESPONSE TO COMMUNICATION

RECEIVED

COMMISSIONER FOR PATENTS  
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AUG 26 2003

TECH CENTER 1600/2900

Sir:

In response to the Communication dated July 30, 2003 ("Communication"), please consider the following remarks in connection with the above-identified application.

REMARKS

In the Communication, the Examiner states that, in the Response to Species Election filed May 12, 2003, there are inconsistencies in Applicant's statement of claims readable on the elected species. Applicant resolves those inconsistencies as follows.

1. The Examiner states that the elected cardiac-specific muscle promoter was indicated as reading on claims 2 and 3 but not claims 54 and 55, drawn to the same limitations as claims 2 and 3.

In response, Applicant agrees. This promoter does not read on claims 2 and 3. Thus, claims readable on this species are 1, 4-27, 42-53 and 56-60.

2. The Examiner states that the elected HRE element was indicated as not being readable on claims 16 and 17, while the erythropoietin gene, elected as the gene from which the HRE element was taken, was indicated as readable on claims 16 and 17. In response, Applicant agrees the erythropoietin gene does not read on claims 16 and 17. Thus, claims readable on the erythropoietin gene are 1-12, 18-27, 42-58 and 60.